(1)

Supreme Court, U.S.
FILED

97 618 OCT - 3 1997

OFFICE OF THE CLERK

No.

IN THE
Supreme Court Of The United States

October Term, 1997

AMRIT LAL,
Petitioner

vs.

ROBERT N.C.NIX, Jr., et. al, and
THE PENNSYLVANIA BOARD OF LAW EXAMINERS

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Amrit Lal
338 Joy Lane
West Chester, Pa. 19380
(610) 692 6344

Petitioner, pro se

28 pp

QUESTIONS PRESENTED

I

Did the Third Circuit Court of Appeals abuse its discretion in failing to grant even one request for enlargement of time to file a pro se appellant's Brief in support of a timely filed Notice of Appeal, and thereby denied petitioner equal protection and equal treatment required by the Fourteenth Amendment.

II

Is the policy of Third Circuit with regard to enlargement of time so restrictive that it violates the essence of Rule 26 (b) Federal Rules of Appellate Procedure which is similar to the Federal Rules of Civil Procedure # 6(b).

PARTIES

Robert N. C. Nix, Jr. together with all other Justices of the Pennsylvania Supreme Court, and Patrick Tassos, Executive Director of the Pa. Board of Law Examiners, together with all the Members of that Board are respondents jointly and individually.

TABLE OF CONTENTS

OPINION BELOW	2
JURISDICTION	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	3
CONCLUSION	5

Note: Table of Case Authorities cited has been omitted because the text of the petition is five (5) or less pages.

INDEX TO APPENDICES

APPENDIX

A. Third Circuit
   I. Order dated Dec. 31, 1996 6
   II. Order dated March 10, 1997 7
   III. Order dated May 6, 1997 8

B. U.S. Dist. Court 9 - 21
   (E.D. PA)
   Opinion dated July 25, 1997

C. Amendment XIV to the United States 22
   Constitution

No.

In The
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1997

AMRIT LAL, Petitioner
vs.
ROBERT N. C. NIX, Jr. et al and
PATRICK TASSOS and
THE PENNSYLVANIA BOARD OF LAW EXAMINERS
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner Amrit Lal respectfully prays that a writ of certiorari issue to vacate the Orders of the Third Circuit Court of Appeals denying petitioner enlargement of time to file appellant's Brief in support of a timely filed Notice of appeal. Petitioner further prays that said Court be directed to modify its local rule with regard to enlargement of time so that it is in conformity with the Federal Rule of Appellate Procedure 26 (b). and Federal Rules of Civil Procedure No. 6(b).

ORDERS AND OPINIONS BELOW

The Orders of the Third Circuit Court of Appeals and Opinions of the United States District Court (E.D. Pa.) appear in Appendix to this Petition. The Third Circuit did not issue an opinion or explanation. The official opinion of the District Court appears in 935 F.Supp.578. (Also see the related case,935 F.Supp.570 for the related case which appears to have caused the confusion in the Third Circuit).

JURISDICTION

The jurisdiction of this Court is invoked under title 28 U.S.C. #1254. The jurisdiction of the District Court was invoked under 28 U.S.C. #1331, 42 U.S.C. # 1983, Art. IV # 2, Art. I # 8 and Amendment XIV of the United States Constitution. Jurisdiction of the District Court was also invoked under Title 28 U.S.C. # 2201, 2202 seeking injunctive relief and declaratory judgment challenging the constitutionality of certain specific Rules of the Pennsylvania Bar Admission policies, customs and practices.

STATEMENT OF THE CASE

Petitioner filed a timely Notice of Appeal. On September 13, 1996, the clerk of the Third Circuit set briefing schedule. Petitioner sought extension of time prior to the deadline in order to coordinate with a related case (Third Circuit Docket # 96-1772, Dist. Ct. No. 95-7938) which had been disposed of simultaneously on July 25, 1996 by the District Court. One of those cases (96-1772) involved the Borough of Kennett Square which had impacted the outcome of the Bar Admission Case (96-1816) directly. This unique circumstance required adjustment in Briefing Schedule especially when the Third Circuit Clerk created a third docket

No.96-1988 for post judgment orders arising from Dist.Ct.Docket No.95-7938. (See 935 F.Supp.570). Petitioner was asked to pay additional filing fees, and then was not allowed to file a Brief in that docket because in the other related case (96-1772), petitioner was being represented by Attorney Michael Yulsman. In the Bar Admission Case, your petitioner was pro se. Petitioner made application for enlargement of time by a letter to the Clerk of the Third Circuit before the scheduled date for filing the Brief, but no positive response was received. Petitioner then wrote a second letter on November 25, 1996 requesting adjustment in scheduling of Briefs to be filed by your pro se petitioner. No reply came forth. Petitioner was surprised to find that on December 31, 1996, the clerk issued an Order dismissing the appeal. See Appendix A to this Petition. Petitioner's request for reconsideration was denied on March 10, 1997, and a request or suggestion for hearing en banc was denied on May 6, 1997. Your Honorable Court allowed this petition to be filed by October 3, 1997.

REASONS FOR GRANTING THE WRIT AND/OR VACATING ORDERS OF THE THIRD CIRCUIT

First, the Third Circuit abused its discretion to overlook the plain language of Federal Rules of Appellate Procedure # 26(b): "The court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time...". Petitioner did show the unique circumstance by formal motions which contained the good cause, that is the need to coordinate three briefs so that all issues are properly argued and dealt with. There was no objection filed by the respondents so the question of any prejudice or harm did not arise since such extensions are

routinely granted. . The arguments in the related case No. 96-1772 were scheduled for July 21,1997 so that the granting of enlargement to file appellant's brief in the case at bar would not have disturbed the case management or judicial administration of the Court.

Second, the requested adjustment in the schedule for filing appellant's brief was not at all jurisdictional so that it was not necessary for the Third Circuit to be overly strict beyond belief. Not even one extension had been granted. Thus the denial of enlargment was arbitrary and an abuse of discretion.

Third, case authorities from various jurisdictions demonstrate that it was an error and abuse of discretion for the Court not to make adjustment in related cases for briefing schedules for the sake of covering all the issues. See Losacco v. City of Middletown, 71 F.3d 88, 92 (2nd Cir.1995) and Lujan v. National Wildlife Fed'n, 497 U.S. 871, 895, 110 S.Ct.3177,3192, 111 L.Ed. 695 (1990).

In Re Harlow Fay Inc., where the District Court had granted three extensions and the 8th Circuit affirmed, 951 F.2d 175, this Court vacated and remanded. 507 U.S. 1015, 113 S.Ct. 1809, 123 L.Ed.2d 441 (1993) in the light of Pioneer Inv.Serv. Inc. v. Brunswick Assocs., 507 U.S. 380, 113 S.Ct.1489, 123 L.Ed.2d 74 (1993) [excusable neglect is an elastic concept, an equitable one, taking account of all relevant circumstances surrounding the party's omission]. 113 S.Ct.at 1498.

Fourthly, the Third Circuit overlooked the standard of liberal construction for a pro se appellant. It would appear that the strict policy of briefing deadlines or adjusting same where appellant is required to file two briefs in related cases is not only offensive to the plain language of the F.R.A.P. 26

(b), which is similar to the F.R.C.P. # 6(b), but in this case, petitioner was denied equal protection and equal treatment expected by the XIV Amendment to the United States Constitution.

CONCLUSION

For the foregoing reasons and case authorities, petitioner respectfully prays that the writ of certiorari be granted, the Orders of the Third Circuit be vacated and the matter remanded to allow petitioner to file his brief and further that it be considered on merits.

RESPECTFULLY SUBMITTED,

AMRIT LAL
Petitioner, pro se.

APPENDIX A

I. Order dated December 31, 1996

UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT
NO.96-1816
Amrit Lal
VS.
Robert N.C Nix, Jr., et al.

Amrit Lal, Appellant
(Eastern District of Pennsylvania Civil No. 94-cv-07773)

ORDER

Pursuant to Rule 3(a) of the Federal Rules of Appellate Procedure and Third Circuit LAR Misc. 107.2,

It is O R D E R E D that the above-entitled case is hearby dismissed for failure to to timely prosecute;

It is FURTHER O R D E R E D that a certified copy of this order be issued forthwith as the mandate.

For the Court,

DOUGLAS SISK
Clerk

Date: December 31, 1996

II. Order dated March 10, 1997

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
C.A. NO. 96-1816
AMRIT LAL
vs.
ROBERT N.C NIX, JR., ET AL.
(E.D. PA. CIV. NO. 94-CV-07773)

Present: BECKER, ALITO and MCKEE,
CIRCUIT JUDGES

Submitted is appellant's "Petition to Vacate Order and Reinstate Appeal," which the court may wish to treat as a motion to reopen in the above-captioned case.

Respectfully
DOUGLAS SISK
Clerk

ORDER

Appellant's motion to reopen is denied.

By the Court,
EDWARD R. BECKER
CIRCUIT JUDGE

Dated: MARCH 10, 1997

III. Order dated May 6, 1997

UNITED STATES COURTS OF APPEALS
FOR THE THIRD CIRCUIT

NO. 96-1816

AMRIT LAL,
APPELLANT

V.

ROBERT N.C. NIX, JR., ET AL
(E.D. PA CIV. NO. 94-CV-07773)

Present: SLOVITER, Chief Judge, BECKER, STAPLETON, MANSMANN, GREENBERG, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS, McKEE, Circuit Judges.

SUR PETITION FOR PANEL REHEARING
WITH SUGGESTION FOR REHEARING IN BANC

The petition for rehearing filed by appellant having been submitted to the judges who participated in the decision of this Court, and to all the other available circuit judges in active services, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is DENIED.

BY THE COURT:
EDWARD R. BECKER
CIRCUIT JUDGE

DATED: MAY 6, 1997

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL ACTION NO. 94-7773

AMRIT LAL

v.

HONORABLE ROBERT N.C. NIX JR., et, al.

M E M O R A N D U M

DITTER, J. JULY, 25, 1996

This case arises out of the defendants' refusal to admit the plaintiff, Amrit Lal, to the Pennsylvania bar. Lal, who is a naturalized United States citizen born in India, alleges in his pro se amended complaint that the defendants, the justices of the Pennsylvania Supreme Court and the Pennsylvania Board of law examiners and its members, executive director, and counselor, denied his admission to the Pennsylvania bar because of his race, national origin, ethnicity, and age. Lal was 60 years old when applied for admission to the bar.

Before me is the defendants' motion to dismiss or for summary judgment. I conclude that I do not have subject matter jurisdiction over Lal's claims, and must dismiss the amended complaint with prejudice. I dismiss with prejudice because amending the complaint would be futile.

I. FACTS

Because I dismiss for lack of subject matter jurisdiction, I have taken as true all of the allegations in Lal's complaint and drawn all reasonable inference in his favor. I have also considered the transcript of Lal's hearing before the board and the state supreme court docket sheet showing the court's order denying his admission. cf. Oshiver v. Levin,

Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n.5(3d Cir. 1994) (court may consider public records when deciding motion to dismiss under Fed.R.Civ.P. 12 (b) (6). The parties extensively refer to each document in papers filed in this matter and do not dispute the accuracy or authenticity.

Lal applied for and took the July, 1992 Pennsylvania bar examination. Following his completion of the examination, the board learned that he had been convicted, fined, and jailed for several housing code violations relating to his ownership of an apartment complex in Chester county, Pennsylvania, and that he has failed to pay many of those fines. Based on that information, the board notified Lal that he did not appear to meet the Pennsylvania Bar Admission Rules' requirement that an applicant demonstrate an absence of prior conduct inconsistent with that expected of members of the bar. See Pa. B.A.R. 203 (a) (3). Lal requested a hearing, which the board held in January, 1993. At the hearing, Lal did not deny that he had been convicted, fined, and jailed, and that many of the fines were outstanding, but instead testified that those prosecutions were instituted by racist municipal officers.

Following the hearing, the board refused Lal's application. Pursuant to Pennsylvania Bar Admission Rule 222, Lal sought review of this refusal in the Pennsylvania Supreme Court and in July, 1993, filed a brief arguing his position. In a per curiam ordered dated October 28, 1993, the supreme court affirmed the board's decision. Lal did not seek review of the state court's decision in the United States Supreme Court.

In a previous opinion and order dated November 13, 1995, I dismissed the bulk of Lal's original complaint on Rooker-Feldman grounds, because it requested that I review the Pennsylvania Supreme Court's and board's decisions refusing his admission to the bar. See Dist. of Columbia

court of Appeals v. Feldman, 460U.S. 462, 476 (1993); Rooker v. Fidelity Trust, 263 U.S. 413, 415-16 (1923).[1] In addition to Lal's request for review of state Supreme Court's and board's decisions, the original complaint contained two references to "disparate treatment and racial discrimination."

On June 10, 1996, I ordered Lal to respond to the defendants' motions by June 20, 1996. The defendants had filed their motion in December 1995, giving Lal almost six months to respond. Lal filed a response on June 20, 1996. Despite having more than sufficient time to respond, on June 20, 1996--eight days after the deadline set in my order--Lal filed a supplemental memorandum in response to the defendants' motions. For completeness' sake, I have not dismissed the memorandum as untimely and will consider the argument raised in it.

II. THE AMENDED COMPLAINT

Lal filed an amended complaint which contained two counts. The first, numbered "count 20," was filed pursuant to 42 U.S.C. 1983 and alleged the defendants refused his admission to the bar because of his race, national origin, or ethnicity in violation of his federal constitutional rights to due process and equal protection. (See Amend. Comp. 20). The other, numbered "count 21," alleged that Lal was denied admission based on his age in violation of the age

---

1. In his response to the defendants' motion to dismiss, Lal argues that the state supreme court's decision not to admit him to the bar was "administrative" and not a "judicial decision" within the meaning of the Booker-Feldman doctrine. I definitively and explicitly rejected the argument in November 13, 1995, opinion and again in my May 9, 1996, order reconsidering that opinion. Because I have previously rejected Lal's argument twice before, the issue is not now before me.

discrimination in Employment Act, 29 U.S.C. 621, et. seq.. ("ADEA"), and the Pennsylvania Human Relations Act, 43 Pa. C.S. 951, et.seq. ("PHRA") (Amend. Comp. 28).

Lal based his race, national origin, and ethnicity claim on the following averments. In July, 1992, according to Lal, Defendants Patrick Tassos, the board's executive director, and Rebecca Sturchio, Esquire, the board's counsel, asked him "to go back to India" if he wished to practice law and attempted to discourage him from becoming a member of the Pennsylvania bar. (Amend. Comp. 5). Shortly thereafter, Lal alleges Sturchio required him to submit a certified copy of an Indian law degree, proof of United States citizenship, and a copy of an Indian statute prohibiting American citizens from practicing law there. (Amend. Comp. 4,7). When Lal complied with all of these requirements, he claims the defendants then subjected him to "secret,"" unwritten," "vague," and "unconstitutional" good character standards. In applying these standards, he contends the board relied on "hearsay" allegations of his arrests, fines, and convictions, failed to provide him written notice of the board's good character requirements at his January, 1993, administrative hearing, and generally conducted that hearing unfairly. (Amend. Comp. 12-13). Apparently, the sole allegedly discriminatory action taken by the Supreme Court justices were issuing their order affirming the board's decision.

> As relief, Lal seeks lost earnings and punitive and compensatory damages, attorneys' fees and costs, and permanent and prospective injunctive relief against all the individual defendants named in the original complaint, enjoining them forever (Sic) denying petitioner's permission to sit for the Pa. Bar Exam without due process and equal protection of the law as guaranteed by the 14th amendment to the U.S. Constitution and from violating plaintiff's

> civil and constitutional rights in denying certification and admission to the Bar of Pennsylvania on account of his race, national origin and age.

(Amend. Comp. at 5-6).

In count 21, Lal contends that the defendants knew that he was 60 years old when they denied his application and that the denial was because of his age. He requests damages comprising "lost time and earnings" in the amount of $225,000.[2]

III. DISCUSSION

In the present motion, the defendants argue that I must dismiss the amended complaint as violative of the Rooker-Feldman doctrine because in it Lal seeks a prohibited federal district court review of the state supreme court's and board's decisions denying his admission to the bar. The crux of the defendants' argument is that granting Lal the relief he seeks would require me to conclude that the real reason the state supreme court and board refused him admission to the bar was not his unfit character, but his race, ethnicity, national origin, or age.

Lal argues that in my November 13, 1995, opinion I ruled that the Rooker-Feldman doctrine is not a bar to the claims in the amended complaint. Lal misreads my opinion. The averments in the Lal's original complaint relating to "disparate treatment and racial discrimination"

---

2. Even if I did not dismiss Lal's federal age discrimination claim for lack of subject matter jurisdiction, I would dismiss it as time barred because he did not file suit within 300 days of the defendants' alleged discriminatory conduct. See 29 U.S.C. 626 (d) (2). Additionally, Lal's claim is flawed because he does not allege that he ever filed a grievance with the Equal Employment Opportunity Commission, which is a prerequisite to bringing a federal civil action under the ADEA. See 29 U.S.C. 626 (d); Bihler v. Singer Co., 710 F. 2d 96, 97 (3rd Cir. 1983).

were so vague, skeletal, and patently insufficient, that anyone reading the complaint would have no idea what he was alleging. I could not possibly have ruled the Brooker-Feldman doctrine inapplicable given such incomprehensible allegations. Indeed, one of the reasons I permitted him to amend the complaint was to state those allegations in more detail so that I could determine whether the Rooker-Feldman doctrine barred his claims. (See November 13, 1995, op. at 2)

In Feldman, the United States Supreme Court held that a federal district court does not have subject matter jurisdiction to review a judicial decision of a state's highest court. See also Atl. Coast Line R.R. Co. v. Bhd of Locomotive Eng'rs, 398 U.S 281, 296 (1970) (lower federal courts possess no power whatever to sit in direct review of state court decisions"). The court also held that federal district courts do not have subject matter jurisdiction to hear constitutional claims not raised in the state court proceedings but which are "inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's application for admission to the state bar." A review of those upraised and unmitigated constitutional claims is prohibited because it would require the federal district court to "in essence" review the state court's judicial decision. Feldman, 460 U.S. at 482 n.16. Only the United States Supreme Court has subject matter jurisdiction to hear an appeal of a state court's judicial decision or constitutional claims "inextricably intertwined" with the state court judgment. See 28 U.S.C 1257 (a); See also Rooker, 263 U.S. at 416. The United States Court of Appeals for the Third circuit has construed the Rooker-Feldman doctrine to preclude federal district court review of the lower state courts as well. See Port Auth. Police Benevolent Ass'n, Inc. v. Port Auth. of New

York and New Jersey Police Dep't, 973 F.2d 169, 178 (3d cir.1992). [3]

Lal argues that dismissal of his claims will leave him unable to litigate them in federal court. The Feldman court recognized that plaintiffs who did not raise their federal constitutional causes of action in state court, and thus did not preserve them for United States Supreme Court review, would be without a forum to litigate them. That result is appropriate, the court concluded, because state courts are competent to properly decide federal constitutional claims. The court further reasoned that precluding lower federal court review of state court judgments also advances the "desirable" policy of having a state court be the first to construe the state statute or rule in light of federal constitutional arguments, allowing it to give the rule of saving construction in light of those arguments. In so holding in Dasher v. Supreme Court of Texas, 658 F.2d 1045 (5th Cir. 1981), that a federal district court has subject matter jurisdiction to review constitutional claims that a litigant fails to raise in the state court proceedings.

In a related argument included in his supplemental memorandum, Lal claims that with a post-Feldman amendment to 28 U.S.C. 1257, Congress invalidated or limited the application of the Rooker-Feldman doctrine. In 1988, Congress amended section 1257 to eliminate the right to appeal to the United States Supreme Court from a state court judgment calling into question federal law. Thereafter, parties to such cases could only request discretionary review by writ of certiorari. Lal argues the court's acceptance of so few cases on discretionary review effectively eliminates his only avenue into federal court. He contends that Congress

---

3. Lower federal courts may review state court judgments only in limited circumstances which do not exist here, such as on an application for a writ of habeas corpus. See 28 U.S.C. 2254.

could not have intended this result. Thus, the argument goes, Congress meant to eliminate the Rooker-Feldman doctrine and grant federal district courts jurisdiction to review state court judgments. Lal's argument is unique, but not persuasive. There is no indication in the language of the amendment or in its legislative history that Congress intended to repeal or limit the application of the Rooker-Feldman doctrine. Moreover, Lal's argument ignores the policy justifications for the doctrine discussed in Feldman, which are still furthered by the amended section 1257. Indeed, the legislative history cites the state courts' competence to decide federal constitutional claims as a basis for passing the amendment. See H.R. Rep. No. 100-660, 100th Cong. at 7, 1988 U.S.C.C.A.N. 776,772 (1988).

There is no indication that Lal raised his race, ethnicity, national origin, or age discrimination claims either before the board or the state court. Accordingly, resolution of this case turns whether Lal's claims are "inextricably intertwined" with the state supreme court's decision denying his admission to the bar. If they are, I do not have subject matter jurisdiction and must dismiss the amended complaint. "A federal claim in inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it." Centifanti v. Nix, 865 F.2d 1422, 1430 (3d Cir. 1989) (quoting Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 25 (1987) (Marshall, J. concurring)); See also FOCUS v. Allegheny County Court of Common Pleas, 75 F. 3d 834 840 (3d Cir. 1996) (Rooker-Feldman doctrine prohibits federal action if relief requested would render state court judgment ineffectual).

I do not have subject matter jurisdiction over the claims in Lal's amended complaint because they are "inextricably intertwined" with the state supreme court's

judgment and board's decision in his bar admission proceedings. As Feldman makes clear, Lal is not permitted to make a particularized challenge in federal court to an adjudication against him in state court. In the state proceedings, the board found Lal not fit for admission to the Pennsylvania bar because he engaged in conduct which showed his character was incompatible with the standard expected to be observed by members of the bar. See Pa. B.A.R. 203 (a) (3). The state supreme court affirmed that decision. In order to grant the relief requested in the amended complaint, I would have to conclude that Lal's bad character was not the real reason for the denial of his application for admission to the bar but that the real reason was his race, ethnicity, national origin, or age. Such a finding would clearly void the judgment of the state court and violate the Rooker-Feldman doctrine. [4]

The conclusion that my decision on the merits of Lal's claims would require me to make a prohibited review of the state court judgment in consistent with both Marks v. Stinson, 19 F. 3d 873 (3d Cir. 1994), and FOCUS v. Allegheny County Court of Common Pleas, 75 F. 3d 834 (3d Cir. 1996). In both of those cases, the Third Circuit allowed federal court actions to proceed despite orders in proceedings in state court relating to the same claim.

---

4. Strictly speaking, Feldman only prohibits bringing "inextricably intertwined" constitutional claims in a federal lawsuit. However, my ruling on the merits of Lal's statutory claims under the ADEA and PHRA would violate the Rooker-Feldman doctrine for the same reasons as would a ruling on the merits of the constitutional claims would: in order to grant him the relief he seeks, I would have to find that the real reason for the denial of his application was his age and not his unfit character. Such ruling would void the state court judgment.

In Marks, following the state court's ruling that it lacks jurisdiction under state law to hear the plaintiffs' claims, the plaintiffs filed suit in federal court. The Third Circuit held that the Rooker-Feldman doctrine would not bar the Marks' plaintiffs' federal lawsuit because the only issue decided by the state court related to state law jurisdiction. Thus, the federal court could still find that the plaintiffs' federal claims had merit without disturbing the state court ruling that it had no jurisdiction under state law to hear plantiff's claims.

Similarly, in FOCUS, the Third Circuit allowed a federal lawsuit to proceed despite a state supreme court order refusing to exercise discretionary authority to hear the plaintiffs' appeal. Following a state trial court's refusal to accept the plaintiffs' motion to intervene in a civil action, the plaintiffs petitioned the state supreme court for exercise of its extraordinary and discretionary " King's Bench" jurisdiction. When the state supreme court refused, the plaintiffs filed suit in federal district court. On appeal, the Third Circuit held that the state court's refusal to exercise discretionary jurisdiction did not preclude the federal lawsuit because by specifically refusing to even review the case, the state court did not adjudicate the merits of the claims before it. A federal district court, therefore, could decide the plaintiffs' claims without voiding or otherwise disturbing the state court's orders.

The instant case is distinguishable for one simple but critical reason: in order to grant the relief Lal seeks, I would have to vacate or reverse the Pennsylvania Supreme Court's order. This is quite different then the situation in Marks and FOCUS. In those cases, given the nature and bases of the state court orders, one holding that the court has no jurisdiction to hear a lawsuit, the other refusing to even review the case, the federal courts could decide the merits of the plaintiffs' claims without affecting the state court orders.

If I allowed Lal to raise his claims now, after his unsuccessful attempt to complete to state bar admission process, I would be ignoring the Rooker-Feldman doctrine. There is no question that the Pennsylvania Supreme Court was competent to review Lal's claim that the board and its procedures were discriminatory. See Feldman 460 U.S. at 482 n.16; Guarino V. Larsen, 11 F. 3d 1151, 1157 (3d Cir. 1993). Further, a decision by me on the merits of Lal's claims would encourage other litigants to challenge state court decisions in federal court improperly, depriving state courts of the opportunity to give saving constructions to state rules and statutes in light of federal constitutional arguments.[5]

Moreover, the history of Lal's bar admission proceedings establishes that he had ample opportunity to raise his discrimination claims before the state supreme court. He was aware of virtually all the state officials' allegedly discriminatory conduct even before his January, 1993, board hearing, let alone before he submitted his brief to the state supreme court in July, 1993.

Lal argues that I should permit his claims to proceed because he could not have raised them before the board and supreme court. However, he points to no obstacle to his raising the claims in the state supreme court. Indeed, the Pennsylvania supreme court had previously considered the constitutionality of the board's actions and bar admission rules in several appeals by unsuccessful bar applicants.

---

5. Such a ruling by me would be especially unwise given the strong state interest in regulating and licensing lawyers and would needlessly entangle the federal courts in issues more aptly and efficiently handled by the states. See Feldman, 460 U.S. at 482 n.16 ("[t] he interest of the states in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been 'officers of the court'") (quoting Goldfarb v. Virginia State Bar, 421 U.S 773 (1975)).

In the Matter of Ferriman, 408 A.2d 844 (1979) (constitutionality of rule requiring graduation from accredited law school); Appeal of Murphy, 393 A. 2d 369 (1978) (same), Cert. denied, 440 U.S 901 (1979); Appeal of Icardi, 260 A.2d 782, 784 (1970) (procedural due process claim); Appeal of Christy, 67 A.2d 85, 87 (1949) (due process and equal protection claims), Cert. denied, 338 U.S 869 (1949).

IV. CONCLUSION

In sum, because I do not have subject matter jurisdiction over the amended complaint, I must dismiss it with prejudice.[6]

An appropriate order follows.

---

6. Parts of Lal's amended complaint are plainly defective for other reasons. First, his claim for money damages against the state supreme court justices is barred by judicial immunity which protects the justices from suits for damages for actions taken pursuant to their judicial power. Mireles V. Waco, 502 U.S 9. 11 (1991). Accordingly, because the justices have jurisdiction to regulate admission to the state bar, See Pa. Const., Art. 5 10(c); 42 Pa. C.S 1722 (a) (1); Pa. B.A.R. 103, and because their action were judicial, Lal cannot sue them for money damages. Second, Lal's section 1983 claim for damages against the individual defendants in their "official capacities" and the board must be dismissed because a state official acting in his or her official capacity and state agency are not "persons" within the meaning of 1983. Will V. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989). Finally, the individual defendants acting in their official capacities and the board have Eleventh Amendment immunity from suits for money damages in federal court. Lal claims that the defendants waived these defenses or that in my November 13, 1995, opinion I implicitly ruled the defenses because they asserted them at every turn. Further, it is clear from November 13, 1995, opinion that I never ruled on these defenses, either explicitly or implicitly.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 94 -7773
AMRIT LAL

V.

HONORABLE ROBERT N.C NIX JR.,et al.

ORDER

AND NOW, this 25th day of July, 1996, it is hereby ORDERED that:

1. The defendants' motion dismiss the amended complaint for lack of subject matter jurisdiction is GRANTED.

2. The amended complaint is DISMISSED with prejudice.

3. The plaintiff's "Motion for reconsideration of order dated May 9, entered 14" (document #35) is DENIED.

4. The plaintiff's motion to compel discovery (document #32) is DENIED as moot.

5. The plaintiff's motion to grant discovery requests (document #37) is DENIED at moot.

BY THE COURT:
J. WILLIAM DITTER,
J.

APPENDIX C

Amendment XIV to the United States Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

No.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

AMRIT LAL, Petitioner

vs.

ROBERT N. C. NIX, JR et.al.

PETITION FOR WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS
FOR THE THIRD CIRCUIT

PROOF OF SERVICE

I, Amrit Lal, do swear and declare that on this date, October 3, 1997, pursuant to the Supreme Court Rules 29.3 and 29.4, I have served the attached PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding, or that party's counsel, and on every other person required to be served by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first class postage prepaid.

The names and addresses of those served are as follows:

Howard Holmes, Esq.
1515 Market Street
Suite #1414
Philadelphia, PA 19102
(Attorney for Respondents)

_____
Amrit Lal, Affiant

Subscribed and Sworn to Before Me
this _____ day of October _____, 1997

_____
Notary Public in and for the
County of Delaware and
Commonwealth of Pennsylvania